AFR (65)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, CJ

WRIT PETITION NO. 4960 OF 2005

PETITIONER N.D. Atulkar, S/o Late Shri Dajiba Atulkar, Aged about 53 years, Occupation – Service, Presently working as Incharge Divisional Manager, Industrial Plantation Division, Bilaspur (C.G.) R/o Shanti Nagar, Bilaspur (C.G.).

Versus

RESPONDENTS

1. State of Chhattisgarh, through the Secretary, Department of Forest, Mantralaya, D.K.S. Bhawan, Raipur (C.G.)
2. Managing Director, Chhattisgarh Rajya Van Vikas Nigam Limited, Lokash Plaza, Shankar Nagar Road, Raipur (C.G.).
3. J.S. Paikra, Incharge Manager (Mktg.) Head Office, Raipur (C.G.).

Present: Mr. P. Diwaker, Sr. Advocate with Smt. Fouzia Mirza, learned counsel for the petitioner.

Mr. Utkarsh Verma, learned Dy. Govt. Adv., for the State/ respondent No.1.

Mr. Ranbir Singh, learned counsel for respondent No.2

Mr. P.S. Koshy, learned counsel for respondent No.3.

O R D E R
(Passed on 16th December 2005)

The petitioner is presently working as Incharge Divisional Manager, Industrial Plantation Division, Bilaspur (C.G). Earlier, the petitioner was working in Panavaras Paroyojna Mandal, Rajnandgaon. The Managing Director, Chhattisgarh Rajya Van Vikas Nigam Ltd., Raipur (C.G.), the second respondent herein, by his order dated 21.01.2004, had transferred the petitioner from Rajnandgaon to Head Office at Bilaspur. The petitioner, vide order dated 29.10.2004 issued by the second respondent, was given

the charge of Deputy Manager, Bilaspur. Later, the second respondent, vide his order dated 23.09.2005, transferred the petitioner from Bilaspur to Kawardha Project Division, Kawardha. The petitioner being aggrieved by the above order of the second respondent has preferred this writ petition under Articles 226/227 of the Constitution of India.

(2) I have heard learned counsel for the parties.

(3) Mr. P. Diwaker, learned Sr. Advocate, while assailing the validity of the impugned transfer order, urged the following grounds - (i) that the second respondent transferred the petitioner in breach of policy of the State Government completely banning the transfers ; (ii) that the transfer order has resulted in prejudice and hardship to the petitioner; and (iii) that the petitioner has been subjected to frequent transfers, which is arbitrary and unreasonable.

(4) On service of notice, the second respondent has put in appearance through his counsel and has filed statement of objections. In the statement of objections, it was claimed that the petitioner has been transferred in public interest and exigencies of service. It was also contended that the Government policy referred to by the petitioner imposing ban on transfers is not applicable or made applicable to the employees of the Chhattisgarh Rajya Van Vikas Nigam Ltd.

(5) It is well settled by a catena of decisions of the Apex Court and High Courts that transfer of a Government or public servant who is appointed to a cadre of transferable post from one place to another, is an ordinary incident of service and, therefore, does not result in any alteration of conditions of service to his disadvantage and therefore, transfer cannot be said to be punitive in nature. Transfer is an incident of service and an

employee has no right to be posted at a particular place. An employee holding a transferable post has no legal right to insist for his posting at a place of his choice. Transfer of public servant made on administrative grounds of public interest should not be interfered with by the Courts unless there is strong and pressing grounds rendering the transfer order illegal on the ground of violation of mandatory statutory rules or on the ground of *mala fide* or on the ground of lack of authority. The Courts or the Tribunals cannot sit as appellate Court on the orders of the transfers made on administrative grounds. The reason for this self-imposed restraint is that the wheels of administration should be allowed to run smoothly and the Courts or the Tribunals are not expected to interdict the administrative system.

(6) The Supreme Court in **Gujrat Electricity Board Vs. Atmaram Sungomal Poshani**[1], held that transfer is an incident of service and an employee has no right to be posted at a particular place and that transfer cannot be evaded merely on ground of pendency of representation or difficulties. In **Mrs. Shilpi Bose Vs. State of Bihar**[2], the Supreme Court held that the Courts should not interfere with transfer orders which are made in public interest and on administrative grounds unless they are made in violation of mandatory statutory rules or on the ground of *mala fide* and that even where executive instructions are violated, the Court ordinarily shall not interfere and the concerned transferee employee should approach the higher-ups in the department for the relief. In the same decision, it is also held that even where the transfer is effected on request of employees to avoid hardship, the same should not be interfered with by the Courts.

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1. (1989) 2 SCC 602
2. AIR 1991 SC 532

In **Union of India Vs. S.L. Abbas**[3], it was held that no employee has any vested right to seek transfer to a place of his choice. Furthermore, in **State of Madhya Pradesh Vs. S.S. Kourav**[4], the Apex Court held that the Court cannot decide relative hardship; it is for the administration to appreciate on a representation that may be made by the concerned employee and that hardship caused to an employee from transfer is not and cannot be a ground for judicial review of the transfer order. To the same effect is the decision of the Apex Court in **Union of India Vs. H.N. Kirtania**[5],. In **Abani Kanta Ray Vs. State of Orissa**[6], the Supreme Court opined that a transfer which is an incident of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or vitiated by *mala fides* or infraction of any professed norm or principle governing the transfer. In **Chief General Manager (Telecom) Vs. Rajendra**[7], the Apex Court handed down the opinion that in the absence of strong and compelling grounds rendering the transfer order improper or unjustified, such an order should not be subjected to judicial review particularly when at the other place to which the transferee wanted to be retained or posted, there were complaints against him.

(7) In the premise of the principles governing judicial review of the transfer orders noted above, let us proceed to deal with the contentions of the petitioner. It is not the case of the petitioner that the second respondent lacks authority to transfer him from one place to another place. It is also not the case of the petitioner that the second respondent has transferred him vindictively or with a *mala fide* intention or as a punitive measure. It is also

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3. (1993) 4 SCC 357
4. (1995) 3 SCC 270
5. (1989) 3 SCC 445
6. 1995 Suppl. (4) SCC 169
7. (1995) 2 SCC 532 = AIR 1995 SC 813,

not the case of the petitioner that he is not holding a transferable post. Furthermore, the petitioner has not produced any material before the Court to show that the policy decision of the Government placing ban on transfers was applicable or made applicable to the employees of Chhattisgarh Rajya Van Vikas Nigam Ltd.. In that view of the matter, it needs to be noticed that the petitioner has utterly failed to make out any of the three grounds noted above to interfere with the impugned transfer order.

(8) I also do not find any merit in the second contention of the learned senior counsel for the petitioner. As held by the Apex Court in the case of **S.S. Kourav (Supra)**[4], the Court cannot decide the relative hardship caused to an employee on account of the transfer and it is for the administration to appreciate on a representation that may be made by such employee and that hardship caused to an employee from transfer is not and cannot be a ground for judicial review of the transfer order. There is also no merit in the last and third contention of the learned senior counsel. Simply, because, the petitioner in recent time was transferred twice, from Panavaras Paroyojna Mandal, Rajnandgaon to Bilaspur and again from Bilaspur to Kawardha, it cannot be said that the impugned transfer of the petitioner to Kawardha is a vindictive measure or tainted by *mala fide*. Mere frequency of transfers without anything further to show that they are tainted by *mala fide* or liable to be condemned on grounds of arbitrariness and unreasonableness, could not be a ground for this Court to review the impugned transfer order under Article 226 of the Constitution of India and annul the same. No exception could be taken if a State employer or public employer transfers an employee frequently from one place to another place to meet the exigencies of the service and in the public interest. Looking from any angle, we have no good reason to interfere with the impugned

transfer order. The writ petition is devoid of merit and it is accordingly dismissed, however, with no order as to costs.

Sd/-
Chief Justice